EQ ADVISORS TRUST
1290 Avenue of the Americas
New York, New York 10104

October 18, 2010

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Request for Comments Regarding National Futures Association Petition to Amend Rule 4.5

Dear Mr. Stawick:

I am writing on behalf of EQ Advisors Trust (the "Trust") to state our concerns with the recent petition ("Petition") by the National Futures Association ("NFA") to amend Commodity Futures Trading Commission ("CFTC" or "Commission") Rule 4.5.[1]

The Trust is an investment company ("RIC") that is registered with the Securities and Exchange Commission ("SEC") under the Investment Company Act of 1940 (the "1940 Act") and managed by AXA Equitable Life Insurance Company ("AXA Equitable"), an investment adviser registered with the SEC under the Investment Advisers Act of 1940. The Trust offers shares in 67 different portfolios (the "Portfolios"), each of which has its own investment objective and investment strategies. Each Portfolio is managed by one or more sub-advisers that furnish the day-to-day portfolio management for the Portfolio, or is managed directly by AXA Equitable and invests in other Portfolios of the Trust and other RICs managed by AXA Equitable. Currently, the sub-advised Portfolios are advised by 32 different sub-advisers. The Trust's shares are currently sold only to insurance company separate accounts in connection with variable life insurance contracts and variable annuity certificates and contracts issued or to be issued by AXA Equitable or other affiliated and unaffiliated insurance companies. Certain Portfolios may invest a portion of their assets in commodity futures and commodity options that are based on broad-based securities indices and other reference assets.

CFTC Rule 4.5 provides an exclusion from the definition of a commodity pool operator ("CPO") to regulated entities such as RICs, which permits a RIC to trade in commodity futures and commodity options without registering as a CPO. The NFA's proposed amendments to Rule 4.5 would reinstate restrictions on commodity futures and commodity options trading and on marketing activities ("Restrictions") by RICs that were removed by the CFTC when it last amended Rule 4.5 in 2003.

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[1] Petition of the National Futures Association, Pursuant to Rule 13.2, to the U.S. Commodity Futures Trading Commission to Amend Rule 4.5, 75 Fed. Reg. 56997 (Sept. 17, 2010).

The NFA's proposed amendments to Rule 4.5 would adversely affect RICs that carry out their investment strategies by investing a portion of their portfolios in commodity futures and commodity options contracts. The Trust urges the CFTC to reject the NFA Petition for the following reasons:

1. The justifications articulated by the CFTC for removing the Restrictions in 2003 – that RICs are subject to comprehensive regulation under the federal securities laws and that the Restrictions unnecessarily limit access to the commodity futures and commodities options markets – remain valid;

2. Additional federal regulation of RICs under the Commodity Exchange Act of 1974, as amended ("CEA"), would create unnecessary, conflicting, and inefficient regulation, and would create legal uncertainty regarding the status of RICs under the CEA;

3. Reinstating the Restrictions is an overbroad response to the concerns expressed by the NFA in its Petition and would apply both to RICs that follow a "managed futures" strategy as well as RICs, such as certain Portfolios, that invest in futures as part of their overall strategy; and

4. Reinstating the Restrictions would increase costs for RICs and their shareholders.

1. The Rationale for Removing the Restrictions Remains Sound

Prior to the 2003 amendments, entities claiming the Rule 4.5 CPO exclusion generally: (1) were prohibited from marketing participations in the fund as a commodity pool or as a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures or commodity options markets, and (2) were required to limit their use of commodity futures and commodity options that were for non-*bona fide* hedging purposes so that their aggregate initial margin and premiums required to establish the contracts was no more than 5 percent of the liquidation value of their portfolio. In 2003, the CFTC amended Rule 4.5 by eliminating the Restrictions. In removing the Restrictions, the CFTC stated that: (a) "the 'otherwise regulated' nature of the qualifying entities in Rule 4.5 would provide adequate consumer protection;"[2] and (b) the Restrictions were "too restrictive for many operators of collective investment vehicles to meet" and, as such, the operators "avoided participation in the commodity interest markets."[3]

a. Comprehensive Federal Securities Law Regulation. The application of the CEA to RICs is unnecessary, because RICs are comprehensively regulated under the federal securities laws, which are administered by the SEC. One of the primary goals of the SEC is the protection of investors, and the importance of this goal is embedded into every aspect of the 1940 Act, the primary statute governing RICs. Unlike the other federal securities laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, and the Investment Advisers Act of 1940, as amended – which are all relevant to RICs – the 1940 Act is not primarily a disclosure-focused statute. While disclosure remains extremely important

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2 68 Fed. Reg. 47221, 47223 (Aug. 8, 2003).

3 67 Fed. Reg. 68785, 68786 (Nov. 13, 2002).

under the 1940 Act statutory scheme, the 1940 Act goes further and subjects RICs to substantive limitations on their activities, including limitations on the use of leverage, limitations on transactions with affiliated parties, limitations with respect to the complexity of their capital structures, and ensures oversight by their boards of directors. Therefore, although RICs claiming the Rule 4.5 CPO exclusion are not subject to CFTC oversight, the SEC oversees all RIC activities, including activities relating to commodity futures and commodity options. Since the 2003 amendments to Rule 4.5, the effectiveness of the SEC in regulating RICs under the 1940 Act has not changed or weakened, and this regulatory scheme continues to provide more than "adequate consumer protection" with respect to RICs that have positions in commodity futures and commodity options.

b. Limited Access to the Commodity Futures and Commodity Options Market. Prior to the 2003 amendments to Rule 4.5, the CFTC noted that margin levels for stock index futures and potentially for security futures contracts generally exceeded the 5% restriction under Rule 4.5, and that the 5% limitation thereby prevented RICs from investing in those strategies. This rationale remains true today. If the NFA's proposed amendments to Rule 4.5 are adopted, the Restrictions would prevent RICs from investing for non-hedging purposes in stock index futures and other commodity futures and commodity options whose margin levels exceed the 5% limitation. As such, RICs would be discouraged from offering futures exposure and greater portfolio diversification to shareholders.

2. The Proposed Amendments Would Create Unnecessary, Conflicting, and Inefficient Regulation, and Would Create Legal Uncertainty Regarding the Status of RICs under the CEA

The 2003 amendments to Rule 4.5 aimed to "harmonize CFTC and SEC regulations." The NFA's proposed amendments do the opposite by increasing the amount of federal regulation of RICs with little commensurate benefit to investors. The CFTC should reject the NFA's proposed amendments because they are: (a) unnecessary, since the SEC has enhanced its oversight of RIC investments in derivatives; (b) potentially conflicting, since the concurrent CFTC and SEC regulations do not align; and (c) inefficient, since an increase in RICs' registrations as CPOs will decrease CFTC resources. The proposed amendments also should be rejected because they would create legal uncertainty regarding the status of RICs under the Commodity Exchange Act and related regulations due to the lack of clear guidance on how the Restrictions would apply in the RIC context.

a. Regulation of RICs under CPO regulations is unnecessary. The CFTC stated in its 2003 proposing release that the regulation of RICs under the 1940 Act is adequate to protect investors. Since that time, RIC disclosure to fund investors required under the 1940 Act continues to evolve to meet new challenges, including those caused by investments in commodity futures and commodity options and other derivatives. The SEC currently is conducting a comprehensive review of RICs' use of derivatives to determine what additional protections and additional disclosures are necessary for investors.[4] In addition, the SEC staff

[4] See SEC Press Release, "SEC Staff Evaluating the Use of Derivatives by Funds (Mar. 25, 2010), available at http://www.sec.gov/news/press/2010/2010-45.htm.

recently provided additional guidance to RICs with respect to improved disclosure about investment in derivatives.[5]

b. Dual CFTC/SEC regulation is potentially conflicting. For example, a RIC claiming the CPO exclusion under Rule 4.5 might nevertheless run afoul of Rule 4.5 because the SEC's disclosure requirements with respect to investments in derivatives could cause a RIC to be in violation of the Rule 4.5 prohibition on "marketing participations to the public as … a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures or commodity options markets."[6] Thus, the 1940 Act disclosure obligations of a RIC that invests in commodities futures and commodities options – yet does not market itself as a managed futures fund – might nevertheless prevent the RIC from availing itself of the Rule 4.5 exclusion.

c. Dual CFTC/SEC regulation is inefficient because it will increase the number of registered CPOs and reduce the CFTC's resources. Under the NFA's proposed amendments, a large number of RICs would become subject to CPO regulation. This would require the CFTC to engage in review and regulation of these "otherwise regulated" RICs – the same type of funds the CFTC saw fit to exclude from CFTC registration in 2003. The resulting drain on CFTC resources is not commensurate with the level of risk associated with comprehensively regulated RICs.

d. Regulation of RICs under CPO regulations would create legal uncertainty for RICs due to the lack of clear guidance on how the Restrictions would apply in the RIC context. Under the NFA's proposed amendments, RICs, such as the Portfolios, would be required to determine whether every position in commodity futures and commodity options is used for a *bona fide* hedging strategy under CFTC Rule 1.3(z)(1), and thus not counted toward the 5% limit. Experience has shown that this analysis increases costs and that the answer in many cases is not certain. RICs also would be required to determine whether they comply with the marketing restriction. However, under the NFA's proposed amendments, even basic prospectus disclosure required under the federal securities laws regarding a Portfolio's investment in futures contracts could be construed as marketing participation "in a vehicle for trading in (*or otherwise seeking investment exposure to*) the commodity futures or commodity options markets." (Emphasis added.) The legal uncertainty that would be created by the NFA's proposed amendments is undesirable and indeed is unnecessary given the comprehensive regulatory framework established by the 1940 Act.

3. The Proposed Amendments are Overbroad

The CFTC should reject the NFA's proposed amendments because they are overbroad, potentially affecting many more RICs than the risks the NFA cites. In its Petition, the NFA states that its concerns stem from certain RICs that market themselves as "managed futures funds." The NFA points specifically to three such funds. The NFA proposal states that, despite the regulation of these RICs under the 1940 Act, these funds should be subject to additional CPO regulation to ensure adequate regulatory protection for unsophisticated investors.

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5 See SEC letter to Investment Company Institute "Re: Derivatives-Related Disclosures by Investment Companies" (July 30, 2010), available at http://www.sec.gov/divisions/investment/guidance/ici073010.pdf.

6 See Proposed Rule 4.5(c)(2)(iii)(b).

Notwithstanding our position that additional CPO regulation is not necessary for comprehensively regulated RICs – including those that market themselves as managed futures funds – we object to the NFA's proposed response to its concerns. Rather than craft an amendment to Rule 4.5 that specifically addresses the concerns raised by the NFA with respect to "managed futures funds," the NFA's proposed amendments apply to *all* RICs with more than *de minimus* positions in commodity futures and commodity options – not just those held out as managed futures funds. For RICs, such as the Portfolios, investing only a portion of their portfolios in commodity futures and commodity options (as opposed to funds that hold themselves out as "managed futures funds"), the NFA has put forth no argument to support its contention that comprehensive regulation of RICs under the federal securities laws is inadequate to protect investors that invest in such RICs or that additional CFTC-mandated disclosure would provide these investors with additional protection beyond the extensive regulations of the 1940 Act and the other federal securities laws.

4. Reinstating the Restrictions Would Increase Costs for RICs and Their Shareholders.

Reinstating the Restrictions would be unnecessarily costly to RICs and their shareholders. Many RICs, including certain Portfolios managed by AXA Equitable, use futures contracts on broad-based securities market indexes as an efficient means of obtaining and adjusting exposure to certain markets, rather than buying and selling large numbers of individual securities that comprise the index, which generally involves significantly higher transaction costs. The proposed Restrictions would significantly limit RICs' ability to use futures contracts in this manner, and would have the effect of increasing transaction and other costs for RICs and their shareholders. In addition, the NFA's proposal would require RICs to implement compliance mechanisms and monitor their investments so as to avoid running afoul of the Restrictions. The development of these compliance and monitoring policies would create added costs for RICs – costs that shareholders ultimately would bear.

Conclusion

When enacted in 2003, the amendments to Rule 4.5 were "intended to allow greater flexibility and innovation"[7] and to benefit investors by fostering greater regulatory efficiency. By requiring unnecessary, overbroad, costly, and potentially conflicting regulation of RICs, the NFA's proposed amendments to Rule 4.5 not only run counter to the 2003 goals, they exacerbate the problems the 2003 amendments sought to fix, particularly in light of the growth of the commodity futures and commodity options market, the increased use of these instruments by a larger number of RICs, and the evolving regulation of RICs' use of derivatives under the 1940 Act and other federal securities laws. Rather than provide useful protection to investors, the proposed amendments serve to increase shareholder costs and regulatory inefficiency, while promoting little additional investor protection. We thus respectfully request that the CFTC reject the NFA's proposal to amend Rule 4.5.

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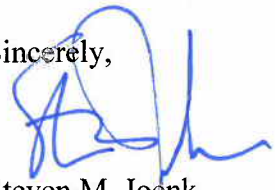
[7] 68 Fed. Reg. 12622, 12625 (March 17, 2003).

We appreciate the Commission's consideration of these comments. If you have any questions or would like additional information, please do not hesitate to contact me at 212-314-5718 or Patricia Louie, Secretary of the Trust, at 212-314-5329.

Sincerely,



Steven M. Joenk
Chair, Chief Executive Officer and
President of EQ Advisors Trust

cc: The Board of Trustees of EQ Advisors Trust

Patricia Louie, Esq.